

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 770 Session of
1979

INTRODUCED BY COPPERSMITH, EARLY, MESSINGER, LINCOLN, ORLANDO,
LYNCH, HANKINS, O'CONNELL, MANBECK, SCHAEFER, LEWIS, MELLOW,
MURRAY, ZEMPRELLI, MOORE, HESS AND REIBMAN, MAY 22, 1979

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, AS AMENDED,
HOUSE OF REPRESENTATIVES, FEBRUARY 25, 1980

AN ACT

1 Regulating the licensure and practice of optometry, making
2 repeals and providing penalties.

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1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

3 Section 1. Short title.

4 This act shall be known and may be cited as the "Optometric
5 Practice and Licensure Act."

6 Section 2. Definitions.

7 The following words and phrases when used in this act shall
8 have, unless the context clearly indicates otherwise, the
9 meanings given to them in this section:

10 "Advisory Committee on Continuing Professional Education."

11 An advisory committee established pursuant to section 3 to make
12 recommendations to the board relating to continuing professional
13 education.

14 "Board." The State Board of Optometrical Examiners
15 established pursuant to section 415, act of April 9, 1929
16 (P.L.177, No.175), known as "The Administrative Code of 1929,"
17 or any successor board.

18 "Examination and diagnosis." Any examination or diagnostic
19 means or method compatible with optometric education and
20 professional competence. The term shall encompass the use of
21 pharmaceutical agents for diagnostic purposes classified as
22 miotics, mydriatics, cycloplegics, topical anesthetics and dyes
23 when applied topically to the eye, WHICH PHARMACEUTICAL AGENTS <—
24 SHALL BE APPROVED BY THE SECRETARY OF HEALTH AND, subject to the
25 rules and regulations of the board, provided however that with
26 respect to optometrists licensed before March 1, 1974 only such
27 optometrists who have satisfactorily completed a course in
28 pharmacology as it applies to optometry, with particular
29 emphasis on the topical application of diagnostic pharmaceutical
30 agents to the eye, approved by the board shall be permitted to

1 use diagnostic pharmaceutical agents topically in the practice
2 of optometry.

3 "Optometrist." Any person who, following formal and
4 recognized training in the art and science of optometry has
5 received a doctor of optometry degree from an accredited
6 institution and is qualified to seek or has acquired a license
7 to practice the profession of optometry. An optometrist shall be
8 identified either by "Doctor of Optometry," "O.D.," or "Dr."
9 followed by "Optometrist."

10 "Practice of optometry." The use of any and all means or
11 methods for the examination, diagnosis and except for drugs or
12 surgery, treatment of conditions of the human visual system and
13 shall include the examination for, and adapting and fitting of,
14 any and all kinds and types of lenses.

15 "Treatment." The use of any and all preventive and
16 corrective means and methods, except for drugs or surgery, for
17 aid to the human visual system and shall include but is not
18 limited to the adapting and fitting of any and all kinds and
19 types of lenses and devices and the provision of vision
20 developmental and perceptual therapy or ocular exercise for aid
21 to or enhancement of visual functions.

22 Section 3. Powers and duties of the board.

23 (a) The board shall have the following duties:

24 (1) To meet at least six times annually at a place
25 within the Commonwealth determined by the board for the
26 transaction of its business.

27 (2) To prescribe the subjects to be tested, ~~develop~~ <—
28 AUTHORIZE written and practical portions of the examination <—
29 and conduct examinations of qualified applicants for
30 licensure at least twice annually at such times and places as

1 designated by the board.

2 (3) To record all licenses in its office.

3 (4) To grant a license to practice optometry in this
4 Commonwealth to any applicant for licensure who has passed
5 the prescribed examination and otherwise complied with the
6 provisions of this act.

7 (5) To appoint an Advisory Committee on Continuing
8 Professional Education which shall consist of consultants who
9 are optometric educators and optometric practitioners to
10 serve with the Deputy Secretary for Higher Education or his
11 designee.

12 (b) The board shall have the following powers:

13 (1) To grant, refuse, revoke or suspend any license to
14 practice optometry in this Commonwealth pursuant to the
15 provisions of this act.

16 (2) To conduct hearings, investigations and discovery
17 proceedings; to administer oaths or affirmations to
18 witnesses, take testimony, issue subpoenas to compel
19 attendance of witnesses or the production of records; to
20 exercise all powers granted by law or regulation in
21 accordance with the general rules of administrative practice
22 and procedure. The board or its designated hearing examiner
23 shall exercise the powers enumerated in this paragraph with
24 regard to both licensed doctors of optometry and persons
25 practicing optometry without a license.

26 (3) To obtain injunctions from a court of competent
27 jurisdiction against persons practicing optometry in
28 violation of this act when such practice constitutes a threat
29 to the health and welfare of the public; provided that the
30 board or its designated hearing examiner shall conduct a

1 hearing as otherwise required by this section within 30 days
2 of the injunction date. The chairperson of the board shall
3 exercise this power whenever the board is not in session.

4 (4) To recommend to the Commissioner of Professional and
5 Occupational Affairs such staff as is necessary to carry out
6 the provisions of this act.

7 (5) To incur expenses, retain consultants, appoint
8 committees from its own membership and appoint advisory
9 committees which may include nonboard members.

10 (6) To compensate at a rate fixed by the board,
11 consultants and nonboard members of advisory committees.

12 (7) To authorize the payment of special reimbursements
13 for the secretary of the board or any other designated member
14 of the board for rendering special services authorized by the
15 board.

16 (8) To use qualified board hearing examiners to conduct
17 hearings and prepare adjudications for final review and
18 approval by the board, including disciplinary sanctions.
19 Nothing shall prohibit the board or a designated board member
20 from conducting such hearings.

21 (9) To establish and administer a records system which
22 records shall be open to public inspection during the regular
23 business hours of the board.

24 (10) To hold meetings, other than required by subsection
25 (a), for the conduct of its business upon giving public
26 notice of such meetings.

27 (11) In consultation with the Council on Optometric
28 Education or its successor and the appropriate regional
29 accrediting body recognized by the United States Department
30 of Education, to approve those optometric educational

1 institutions in the United States and Canada which are
2 accredited for the purposes of this act.

3 (12) In consultation with the Advisory Committee on
4 Continuing Professional Education, to establish and approve
5 by rule and regulation courses of continuing professional
6 optometric education. Only those educational programs as are
7 available to all licensees on a reasonable nondiscriminatory
8 fee basis shall be approved. Programs to be held within or
9 ~~without~~ OUTSIDE OF the Commonwealth may receive approval. The <—
10 number of required hours of study may not exceed those that
11 are available at approved courses held within the
12 Commonwealth during the applicable license renewal period. In
13 cases of certified illness or undue hardship, the board is
14 empowered to waive the continuing education requirement.

15 (13) To certify, upon the written request of a licensee
16 and payment of the prescribed fee, that the licensee is
17 qualified for licensure and the practice of optometry in this
18 Commonwealth.

19 (14) To promulgate all rules and regulations necessary
20 to carry out the purposes of this act. THE PROPOSED RULES AND <—
21 REGULATIONS SHALL BE SUBMITTED TO THE SECRETARY OF THE SENATE
22 AND THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES WHO SHALL
23 CAUSE THE RULES OR REGULATIONS TO BE PRINTED AND DISTRIBUTED
24 AMONG ALL MEMBERS OF BOTH CHAMBERS IN THE SAME MANNER AS A
25 REORGANIZATION PLAN. IF BOTH BODIES FAIL TO ACT WITHIN 60
26 DAYS OF RECEIPT OF SUCH RULES OR REGULATIONS, OR WITHIN TEN
27 LEGISLATIVE DAYS AFTER RECEIPT, WHICHEVER SHALL LAST OCCUR,
28 RULES OR REGULATIONS ADOPTED BY THE BOARD SHALL BE
29 PROMULGATED PURSUANT TO THE PROVISIONS OF THE ACT OF JULY 31,
30 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH

DOCUMENTS LAW AND 45 PA.C.S. PART II (RELATING TO PUBLICATION AND EFFECTIVENESS OF COMMONWEALTH DOCUMENTS). IF EITHER CHAMBER DISAPPROVES ANY RULE OR REGULATION, SUCH INFORMATION SHALL BE CERTIFIED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR PRESIDENT PRO TEMPORE OF THE SENATE TO THE BOARD, ANY SUCH RULE OR REGULATION SHALL NOT BE PROMULGATED AS A FINAL RULE OR REGULATION.

(15) TO ADMINISTER AND ENFORCE THE LAWS OF THE COMMONWEALTH RELATING TO THOSE ACTIVITIES INVOLVING OPTOMETRY FOR WHICH LICENSING IS REQUIRED UNDER THIS ACT AND TO INSTRUCT AND REQUIRE ITS AGENTS TO BRING PROSECUTIONS FOR UNAUTHORIZED AND UNLAWFUL PRACTICE.

Section 4. Requirements for examination.

(a) A person holding a Doctor of Optometry degree from an accredited optometric educational institution in the United States or Canada, who furnishes the board with evidence that he is at least 21 years of age, has completed the educational requirements prescribed by the board AND is of good moral character, is not addicted in the use of alcohol or narcotics or other habit-forming drugs and who pays the fee may apply to the board for examination for licensure.

~~(b) The board shall establish by rule or regulation procedures for examination and all other matters related to the proficiency of applicants for licensure.~~

~~(c)~~ (B) The board may establish further requirements to be met by optometric graduates from unaccredited schools or colleges of optometry before granting such graduates the right to take an examination.

~~(d)~~ (C) An applicant who knowingly makes a false statement of fact in an application for examination shall be deemed to

1 have violated this act and shall be subject to the penalties set
2 forth herein.

3 Section 5. Renewal of license.

4 (a) A person licensed by the board shall apply for renewal
5 of such license by such methods as the board shall determine by
6 regulation, provided that such renewal period shall not exceed
7 two years.

8 (b) Beginning with the year 1982 license shall not be
9 renewed by the board unless the optometrist applying for renewal
10 submits proof to the board that during the two calendar years
11 immediately preceding his application he has satisfactorily
12 completed a minimum of 24 hours of continuing professional
13 optometric education approved by the board.

14 Section 6. Exemptions and exceptions.

15 (a) The licensure requirements of this act shall not apply
16 ~~to optometry officers in the medical service of the armed forces~~ <—
17 TO: <—

18 (1) OPTOMETRY OFFICERS IN THE MEDICAL SERVICE OF THE
19 ARMED FORCES of the United States, the United States Public
20 Health Service, the Veterans' Administration or optometrists
21 employed in Federal service, while in discharge of their
22 official duties; OR <—

23 (2) PERSONS SELLING SPECTACLES AND EYEGLASSES BUT WHO DO
24 NOT ASSUME, DIRECTLY OR INDIRECTLY, TO ADAPT THEM TO THE EYE,
25 OR TO PRACTICE OR PROFESS TO PRACTICE OPTOMETRY.

26 (b) The board shall permit externs, who are fourth year
27 optometric students, to perform procedures and tests for the
28 sole purpose of instruction and experience under the direct
29 supervision and control of an optometrist licensed in this
30 Commonwealth. Nothing contained in this act shall be construed

1 to entitle an extern to practice optometry.

2 (c) The board may, upon written application and payment of
3 the regular examination fee, issue a license without an
4 examination, other than clinical, to any applicant who:

5 (1) ~~Is~~ IS at least 21 years of age; AND <—

6 (2) ~~Has~~ (I) HAS passed a standard examination in <—

7 optometry in any other state or all parts of the

8 examination given by the National Board of Examiners in

9 Optometry, provided that the standards of the other state

10 or the National Board are, ~~in the opinion of the board,~~ <—

11 equal to OR EXCEED the standards of this Commonwealth; OR <—

12 ~~(3)—Is~~ (II) IS licensed in another state and has <—

13 practiced in that state for a minimum of ~~five~~ FOUR years <—

14 immediately preceding application.

15 (d) Nothing in this section shall prohibit the board from
16 imposing additional UNIFORM educational requirements as a <—
17 requisite for licensure.

18 (e) Nothing in this act shall prohibit the sale, duplication
19 and reproduction or dispensing of frames, lenses, spectacles or
20 eyeglasses and related optical appurtenances by any person
21 provided that no such person shall change or modify an original
22 lens power except on a signed written order of a licensed doctor
23 of optometry or licensed physician and surgeon.

24 (f) The provisions of this act shall not apply to physicians
25 licensed under the laws of this Commonwealth.

26 Section 7. Refusal, revocation or suspension of license.

27 (a) The board shall have the power to refuse, revoke or
28 suspend a license to practice optometry in this Commonwealth
29 for:

30 (1) Failure of an applicant for licensure to demonstrate

1 the necessary qualifications as provided in this act or the
2 rules and regulations of the board.

3 (2) Failure to permanently display in any location in
4 which he practices a license or a certified copy of a license
5 issued by the board.

6 (3) Use of deceit or fraud in obtaining a license or in
7 the practice of optometry.

8 (4) Making misleading, deceptive, untrue or fraudulent
9 representations or advertisements in the practice of
10 optometry.

11 (5) Conviction of a felony or a crime involving moral
12 turpitude. Conviction shall include a finding or verdict of
13 guilt, an admission of guilt or a plea of ~~non~~ NOLO <—
14 contendere.

15 (6) Revocation, suspension or refusal to grant a license
16 to practice optometry, or imposition of other disciplinary
17 action, by the proper licensing authority of another state,
18 territory or country.

19 (7) Inability to practice optometry with reasonable
20 skill and safety to patients by reason of incompetence,
21 illness, drunkenness, excessive use of drugs, narcotics,
22 chemicals or other type of material, or as a result of any
23 mental or physical condition.

24 (8) Violation of a regulation promulgated or order
25 issued by the board in a previous disciplinary proceeding
26 against that licensee or applicant for licensure.

27 (9) Knowingly aiding, assisting, procuring or advising
28 an unlicensed person, or person who is in violation of this
29 act, or the rules and regulations of the board, to practice
30 optometry.

(10) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or failure to conform to, the acceptable and prevailing standards of optometric practice in rendering professional service to a patient. Actual injury to a patient need not be established.

(b) When the board finds that the license of a person may be refused, revoked or suspended the board may:

(1) Refuse, revoke or suspend a license.

(2) Administer a public or private reprimand.

(3) Limit or otherwise restrict the licensee's practice under this act.

(4) Suspend any enforcement under this subsection and place an optometrist on probation, with the right to vacate the probationary order and impose the enforcement.

(c) A person affected by any action of the board under this section shall be afforded an opportunity to demonstrate that he is no longer in violation of this section.

(d) A person may complain of a violation of the provisions of this act or the rules and regulations of the board by filing a written complaint with the secretary of the board. The board shall decide either to dismiss the case, issue an injunction, or hold a hearing in accordance with the general rules of administrative practice and procedure. If the person filing the complaint is a member of the board, he shall disqualify himself from participating as a member of the board in all procedures related to the complaint which he filed.

(e) Actions of the board shall be taken subject to the right of notice, hearing, adjudication and appeal accorded by law.

Section 8. Violations and penalties.

1 (a) (1) It is unlawful for any person in the Commonwealth to
2 engage in the practice of optometry or pretend to have a
3 knowledge of any branch or branches of the practice of
4 optometry or to hold himself forth as a practitioner of
5 optometry, unless he has fulfilled the requirements of this
6 act and received a license to practice optometry in this
7 Commonwealth.

8 (2) A person ~~found to be guilty~~ CONVICTED of practicing <—
9 optometry without a license ~~as a result of court action or as~~ <—
10 ~~a result of board action~~ shall be guilty of a misdemeanor and
11 shall, on first offense, be subject to a fine of not more
12 than \$1,000 or imprisonment of not more than six months, or
13 both. Conviction on each additional offense shall result in a
14 fine of not less than \$2,000 and imprisonment of not less
15 than six months or more than one year.

16 (b) A person convicted of violating a provision of this act,
17 other than of subsection (a), is guilty of a summary offense and
18 shall be fined not more than \$500.

19 Section 9. Fees and other moneys.

20 (a) The board shall have the power to fix or change fees for
21 examination, biennial ~~and late biennial~~ license renewal, <—
22 verification of licensure or grades to other jurisdictions,
23 initial and renewal certified copies of licenses, and biennial
24 renewal of branch offices.

25 (b) Moneys collected under the provisions of this act shall
26 be paid into a designated account and disbursed according to
27 law.

28 Section 10. Freedom of choice.

29 Any State or municipal board, commission, department,
30 institution, agency or bureau including public schools,

1 expending public money for any purpose involving eye care which
2 is within the scope of the practice of optometry shall not deny
3 the recipients or beneficiaries the freedom to choose an
4 optometrist or a physician and shall make the same reimbursement
5 whether the service is provided by an optometrist or a
6 physician: PROVIDED, THAT WHENEVER PROGRAMS, POLICIES, PLANS OR <—
7 CONTRACTS WHICH PAY ON THE BASIS OF USUAL, CUSTOMARY AND
8 REASONABLE CHARGES OR ON SOME SIMILAR BASIS ARE USED, ONLY THE
9 METHOD OF DETERMINING THE AMOUNT OF REIMBURSEMENT SHALL BE THE
10 SAME.

11 SECTION 11. TRANSITIONAL PROVISIONS.

12 (A) NOTWITHSTANDING ITS REPEAL PURSUANT TO SECTION 12(A),
13 ALL VALID LICENSES ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS
14 ACT UNDER THE PROVISIONS OF THE ACT OF MARCH 30, 1917 (P.L.21,
15 NO.10), REFERRED TO AS THE OPTOMETRY PRACTICE LAW SHALL CONTINUE
16 WITH FULL FORCE AND VALIDITY DURING THE PERIOD FOR WHICH ISSUED.
17 FOR THE SUBSEQUENT LICENSE PERIOD, AND EACH LICENSE PERIOD
18 THEREAFTER, THE BOARD SHALL RENEW SUCH LICENSES WITHOUT
19 REQUIRING ANY LICENSE EXAMINATION TO BE TAKEN. HOWEVER,
20 APPLICANTS FOR RENEWAL OR HOLDERS OF SUCH LICENSES SHALL BE
21 SUBJECT TO ALL OTHER PROVISIONS OF THIS ACT.

22 (B) ALL PROCEEDINGS IN PROGRESS ON THE EFFECTIVE DATE OF
23 THIS ACT SHALL CONTINUE TO PROCEED UNDER THE FORMER TERMS OF THE
24 ACT UNDER WHICH THEY WERE ORIGINALLY BROUGHT.

25 (C) ALL OFFENSES ALLEGED TO HAVE OCCURRED PRIOR TO THE
26 EFFECTIVE DATE OF THIS ACT SHALL BE PROCESSED UNDER THE FORMER
27 OPTOMETRY PRACTICE LAW.

28 Section ~~11~~ 12. Repeals. <—

29 (a) The act of March 30, 1917 (P.L.21, No.10), entitled "An
30 act defining optometry; and relating to the right to practice

1 optometry in the Commonwealth of Pennsylvania, and making
2 certain exceptions; and providing a Board of Optometrical
3 Education, Examination, and Licensure, and means and methods
4 whereby the right to practice optometry may be obtained; and
5 providing for the means to carry out the provisions of this act;
6 and providing for revocation or suspension of licenses given by
7 said board, and providing penalties for violations thereof; and
8 repealing all acts or parts of acts inconsistent therewith," is
9 repealed.

10 (b) All acts or parts of acts are repealed which are
11 inconsistent herewith.

12 Section ~~12~~ 13. Effective date.

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13 This act shall take effect in 60 days.